

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint application of)	
DETROIT THERMAL, LLC, and PROJECT MIST)	
HOLDCO LLC for approval pursuant to)	Case No. U-18443
MCL 460.6q of transfer of control of Detroit)	
Thermal, LLC.)	
_____)	

At the November 30, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On September 5, 2017, Detroit Thermal, LLC (Detroit Thermal), and Project Mist Holdco LLC (Holdco) (collectively, Joint Applicants) filed a joint application consistent with Section 6q of 2008 PA 286, MCL 460.6q, with supporting testimony and exhibits, seeking approval of the proposed transfer of membership interests in Detroit Renewable Energy LLC (DRE), a Delaware limited liability company owned by Detroit Renewable Resources LLC (DRR) and Thermal Ventures II, L.P. (TVII), to Holdco (Proposed Transaction). The Joint Applicants are seeking approval for the Proposed Transaction because DRR holds a controlling interest in DRE and DRE is the sole member of Detroit Thermal, a steam utility subject to the jurisdiction of the Commission.

A prehearing conference was held on September 28, 2017, before Administrative Law Judge Martin D. Snider. The Joint Applicants and the Commission Staff (Staff) participated in the proceeding. There were no intervenors. No public comments were filed. On November 6, 2017, the Joint Applicants and the Staff filed a settlement agreement resolving all issues in this case.

According to the terms of the settlement agreement, attached to this order as Exhibit A, the parties agree that the Proposed Transaction, which results in DRR and TVII selling 100% of the memberships interests in DRE to Holdco, satisfies the requirements under MCL 460.6q(7), and that the relief requested in the Joint Application should be granted. Specifically, the parties state that the Proposed Transaction:

- 1) will not have an adverse effect on the rates of Detroit Thermal customers;
- 2) will not have an adverse effect on the provision of safe, reliable, and adequate steam utility service in Detroit Thermal's service territory;
- 3) will not result in the subsidization of a non-regulated activity through the rates paid by customers of Detroit Thermal;
- 4) will not significantly impair the ability of Detroit Thermal to raise necessary capital or to maintain a reasonable capital structure; and
- 5) is not otherwise inconsistent with public policy and interest.

Based on their review, the Staff and the Joint Applicants recommend that the Commission approve the Proposed Transaction, subject to the following conditions and/or representations as set forth in the settlement agreement:

- a) Holdco will not seek rate recovery from Detroit Thermal customers of transaction costs, acquisition premiums, goodwill or control premiums, or any fees incurred in connection with the Proposed Transaction;
- b) There are no covenants, agreements, or legislative restrictions on Holdco that would reduce or impair Detroit Thermal's access to the capital markets. Further, there are no restrictions in addition to those currently in place for Holdco that would reduce or impair Detroit Thermal's ability to obtain cost competitive and reliable steam supplies;

- c) Holdco will continue existing charitable contribution practices and community support practices in Detroit Thermal's service territory after completion of the Proposed Transaction;
- d) Detroit Thermal shall keep its existing headquarters in Michigan for the foreseeable future;
- e) No substantive labor force reductions or substantive changes to existing benefits are expected as a result of the Proposed Transaction;
- f) Detroit Thermal will explain whether it pays corporate income tax and provide support for its proposed income tax allowance included in the development of its revenue requirement when it files its next general rate case with the Commission; and
- g) Holdco shall notify the Commission by letter of the closing of the transactions and file a copy of said letter in this docket.

The Commission has reviewed the settlement agreement and finds that the public interest is adequately represented by the parties who entered into the settlement agreement. The Commission further finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached to this order as Exhibit A, is approved.
- B. The proposed transfer of 100% of the membership interests owned by Detroit Renewable Resources LLC and Thermal Ventures II, L.P., in Detroit Renewable Energy LLC to Project Mist Holdco LLC is approved.
- C. This order is issued pursuant to Section 6q of 2008 PA 286, MCL 460.6q, and provides all required and related approvals in connection with the proposed transfer of 100% of the membership interests owned by Detroit Renewable Resources LLC and Thermal Ventures II, L.P., in Detroit Renewable Energy LLC to Project Mist Holdco LLC.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of November 30, 2017.

Kavita Kale, Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint application of)	
DETROIT THERMAL, LLC)	
and PROJECT MIST HOLDCO LLC)	Case No. U-18443
for approval pursuant to MCL 460.6q)	
of transfer of control of Detroit Thermal, LLC)	
_____)	

SETTLEMENT AGREEMENT

On September 5, 2017, Detroit Thermal, LLC (“Detroit Thermal”) and Project Mist Holdco LLC (“Holdco”) (collectively, “Joint Applicants”) filed a joint application with the Michigan Public Service Commission (“MPSC” or “Commission”) seeking all approvals, consents, etc., in connection with the proposed transfer of membership interests owned by Detroit Renewable Resources LLC (“DRR”) and Thermal Ventures II, L.P. (“TVII”) in Detroit Renewable Energy LLC, a Delaware limited liability company (“DRE”) to Holdco (such transfer, the “Proposed Transaction”). The filing was submitted pursuant to Section 6q of 2008 PA 286, MCL 460.6q. The Joint Applicants are seeking approval for the Proposed Transaction because DRR holds a controlling interest in DRE and DRE is the sole member of Detroit Thermal, a regulated steam utility subject to the jurisdiction of the Commission.

By this Settlement Agreement, the parties agree and stipulate as follows:

1. The Proposed Transaction:
 - a. will not have an adverse impact on the rates of Detroit Thermal customers;
 - b. will not have an adverse impact on the provision of safe, reliable, and adequate steam utility service in Detroit Thermal’s service territory;

- c. will not result in the subsidization of a non-regulated activity through the rates paid by customers of Detroit Thermal;
- d. will not significantly impair the ability of Detroit Thermal to raise necessary capital or to maintain a reasonable capital structure; and
- e. is not otherwise inconsistent with public policy and interest.

2. Based upon Staff's due diligence review of the Proposed Transaction, it is recommended that the Commission approve the Proposed Transaction as addressed, and pursuant to the terms and conditions in the Membership Interest Purchase Agreement ("MIPA"), subject to the Joint Applicants' commitment to the following conditions:

- a. Holdco will not seek rate recovery from Detroit Thermal customers of transaction costs, acquisition premiums, goodwill or control premiums or any fees incurred in connection with the Proposed Transaction;
- b. There are no covenants, agreements or legislative restrictions on Holdco that would reduce or impair Detroit Thermal's access to the capital markets. Further, there are no restrictions in addition to those currently in place for Holdco that would reduce or impair Detroit Thermal's ability to obtain cost competitive and reliable steam supplies;
- c. Holdco will continue existing charitable contribution practices and community support practices in Detroit Thermal's service territory after completion of the Proposed Transaction;
- d. Detroit Thermal shall keep its existing headquarters in Michigan for the foreseeable future;

- e. No substantive labor force reductions or substantive changes to existing benefits are expected as a result of the Proposed Transaction;
- f. Detroit Thermal will explain whether it pays corporate income tax and provide support for its proposed income tax allowance included in the development of its revenue requirement when it files its next general rate case with the MPSC; and
- g. Holdco shall notify the Commission by letter of the closing of the transactions contemplated by the MIPA and file a copy of said letter in this docket.

3. As a further condition of the Proposed Transaction, Detroit Thermal agrees that if the transactions contemplated by the MIPA are not completed, the customers of Detroit Thermal will not bear any costs associated with the failed transaction process or the failed transactions.

4. It is the opinion of the parties that Commission approval of this Settlement Agreement will promote the public interest, will aid the expeditious conclusion of this case, and will minimize the time and expense which would otherwise have to be devoted to this matter by the Commission and the parties.

5. This Settlement Agreement is for the purpose of final resolution of this case, and all provisions of the Settlement Agreement are dependent upon all other provisions contained therein. By having reached these understandings, the parties are of the opinion that these constitute all of the approvals, consents, etc., required by law, rule, or order in connection with completing the Proposed Transaction.

6. The parties agree not to appeal, challenge or contest the Commission's order adopting this Settlement Agreement if such order accepts and approves this Settlement Agreement without modification. If the Commission does not accept this Settlement Agreement without

modification, then this Settlement Agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.

7. The parties jointly recommend that the Commission issue its Order Adopting Settlement Agreement and resolve this case, granting all required and requested approvals in connection with the Proposed Transaction.

8. This Settlement Agreement has been made for the sole and express purpose of recommending approval of the Proposed Transaction in Case No. U-18443 without prejudice to the rights of the parties to take new and/or different positions in other proceedings. If the Commission approves this Settlement Agreement without modification, then the parties and the Commission shall not make any reference to or use of the Settlement Agreement or the order approving it as a reason, authority, rationale or example for taking any action or position or making any subsequent decision in this case or any other cases or proceedings; provided, however, such reference or use may be made to enforce the Settlement Agreement and Order.

9. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues in this proceeding, if the Commission approves this Settlement Agreement without modification.

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

By: **Spencer
Sattler** Digitally signed by Spencer Sattler
DN: cn=Spencer Sattler, o=Michigan
Department of Attorney General,
ou=Public Service Division,
email=sattlers@michigan.gov, c=US
Date: 2017.11.06 11:13:46 -05'00'

Spencer Sattler (P70524)
Assistant Attorney General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917

Dated: November 6, 2017

DETROIT THERMAL, LLC

By: **Arthur J.
LeVasseur** Digitally signed by Arthur J. LeVasseur
DN: cn=Arthur J. LeVasseur, o=Fischer,
Franklin & Ford, ou,
email=LeVasseur@fischerfranklin.com, c=US
Date: 2017.11.06 09:59:45 -05'00'

Arthur J. LeVasseur (P29394)
Matthew M. Peck (P66361)
FISCHER, FRANKLIN & FORD
Attorneys for Detroit Thermal, LLC
500 Griswold St., Suite 3500
Detroit, MI 48226-3808

Dated: November 6, 2017

PROJECT MIST HOLDCO LLC

By: **Jennifer
Utter Heston** Digitally signed by
Jennifer Utter Heston
Date: 2017.11.06
11:23:05 -05'00'

Jennifer U. Heston (P65202)
FRASER TREBILCOCK DAVIS &
DUNLAP P.C.
Attorneys for Project Mist Holdco LLC
124 W. Allegan St., Suite 1000
Lansing, MI 48933-1736

Dated: November 6, 2017